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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

Arizona Corporation Commission

DOCKETED

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DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
NEW RIVER UTILITY COMPANY FOR
APPROVAL OF THE SALE OF STOCK AND
CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01737A-15-0380

PROCEDURAL ORDER

BY THE COMMISSION:

New River Utility Company (“New River”) is an Arizona corporation authorized to provide water utility service within portions of the City of Peoria, pursuant to a Certificate of Convenience and Necessity (“CC&N”) granted by the Arizona Corporation Commission (“Commission”).

On November 6, 2015, New River filed with the Commission an Application for Approval of the Sale of Stock and Cancellation of Certificate of Necessity (“Application”). New River’s Application states that New River and the City of Peoria (“City”) have entered into an Asset Purchase Agreement through which the City agrees to acquire all of New River’s assets currently used to conduct New River’s business operations, and New River agrees to obtain approval of the sale of assets and cancellation of its Certificate of Convenience and Necessity (“CC&N”). As an exhibit to its Application, New River included a copy of the Asset Purchase Agreement executed by New River and the City on November 5, 2015 (“Agreement”), which included as attachments a Schedule of tangible personal property and equipment, a Bill of Sale, an Assignment and Assumption Agreement and Consent, legal descriptions of real property, a Special Warranty Deed, legal descriptions of easements, an Assignment of Easement, and an Assignment of Interest in Water Rights. New River also provided a Resolution of the Board of Directors of New River approving the sale of all of its assets to the City. The Bill of Sale and Assignment and Assumption Agreement and Consent both refer to a Stock Purchase Agreement, but a copy of the Stock Purchase Agreement was not included with the Application.

1 On November 20, 2015, New River filed a Proof of Notice and Publication showing that
2 notice of the Application had been published in the *Peoria Times* on November 6, 2015.

3 On November 25, 2015, New River filed an Affidavit of Mailing stating that notice had been
4 mailed to New River's customers at least 15 days after the Application was filed.

5 On December 16, 2015, the Commission's Utilities Division ("Staff") issued a Letter of
6 Insufficiency notifying New River that Staff needed additional information to determine sufficiency
7 requirements as outlined in the Arizona Administrative Code ("A.A.C") and including a list of
8 information needed.

9 On December 30, 2015, New River filed a Response to Insufficiency Letter, including several
10 attachments.

11 On January 29, 2016, Staff issued a Sufficiency Letter stating that Staff had determined New
12 River's Application, with the additional documents filed on December 30, 2015, to meet the
13 minimum sufficiency requirements of the A.A.C.

14 It is now necessary to schedule an evidentiary hearing and establish the other procedural
15 requirements to govern the process for this matter. Additionally, pursuant to A.A.C. R14-2-
16 402(D)(2)(e),¹ it is necessary to require New River to file a copy of the Stock Purchase Agreement
17 referenced in the documents included within its Application.

18 IT IS THEREFORE ORDERED that **New River** shall, by **February 24, 2016**, file a copy of
19 the **Stock Purchase Agreement** referenced in the documents included within its Application.

20 IT IS FURTHER ORDERED that the **hearing** in this matter shall commence on **April 6,**
21 **2016, at 10:00 a.m.**, or as soon thereafter as is practicable, at the Commission's offices, Hearing
22 Room No. 1, 1200 West Washington, Phoenix, Arizona 85007.

23 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
24 105, except that all motions to intervene must be filed on or before **March 25, 2016**.

25 IT IS FURTHER ORDERED that any **motion to intervene shall conform** to the
26 requirements of A.A.C. R14-3-105 and this Procedural Order.

27 ¹ A.A.C. R14-2-402(D)(2)(e) requires a utility to include in its application "[t]he terms and conditions of the proposed
28 abandonment, sale, lease, transfer, or assignment and copies of any agreement that has been or will be executed concerning the transaction."

1 IT IS FURTHER ORDERED that any **objections to intervention** shall be filed on or before
2 **April 4, 2016.**

3 IT IS FURTHER ORDERED that **New River shall, by March 2, 2016, mail** a copy of the
4 following notice by first class U.S. Mail to **each customer and each owner of land** within its
5 CC&N service area **and cause the following notice to be published in a newspaper(s) of general**
6 **circulation** in its CC&N service area, in the following form and style, with the heading in no less
7 than 10-point bold type and the body in no less than 8-point regular type:

8 **PUBLIC NOTICE OF HEARING ON**
9 **APPLICATION OF NEW RIVER UTILITY COMPANY**
10 **FOR APPROVAL OF SALE OF STOCK &**
11 **CANCELLATION OF CERTIFICATE OF CONVENIENCE AND NECESSITY.**
12 **(Docket No. W-01737A-15-0380)**

13 **Summary**

14 On November 6, 2015, New River filed with the Commission an Application for
15 Approval of the Sale of Stock and Cancellation of Certificate of Necessity
16 (“Application”). New River’s Application states that New River and the City of
17 Peoria (“City”) have entered into an Asset Purchase Agreement through which the
18 City agrees to acquire all of New River’s assets currently used to conduct New River’s
19 business operations, and New River agrees to obtain approval of the sale of assets and
20 cancellation of its Certificate of Convenience and Necessity (“CC&N”).

21 If New River’s Application is approved, the City will take over water utility service
22 for all of New River’s current customers and will be the only water utility service
23 provider for what is now New River’s CC&N service area. The City is not regulated
24 by the Commission and would set the rates and charges for its services independently.

25 The Commission’s Utilities Division (“Staff”) is in the process of auditing and
26 analyzing New River’s Application and has not yet made any recommendations. The
27 Commission is not bound by the proposals made by New River, Staff, or any
28 intervenor. The Commission will issue a Decision regarding New River’s Application
following consideration of testimony and evidence provided at an evidentiary hearing.

How You Can View or Obtain a Copy of the Application

Copies of the application are available from New River [**COMPANY INSERT HOW
AND WHERE AVAILABLE**] and at the Commission’s Docket Control Center at
1200 West Washington Street, Phoenix, Arizona 85007, for public inspection during
regular business hours, and on the Internet via the Commission’s website
(www.azcc.gov) using the e-Docket function.

Public Hearing Information

The Commission will hold a hearing on this matter beginning **April 6, 2016, at 10:00
a.m.**, in Hearing Room No. 1, at the Commission’s offices at 1200 West Washington
Street, Phoenix, Arizona 85007. Public comments will be taken on the first day of
hearing. Written public comments may be submitted at any time on the Commission’s
website (www.azcc.gov) using the “Submit a Public Comment” function or by mailing
a letter, referencing **Docket No. W-01737A-15-0380**, to Arizona Corporation
Commission, Consumer Services Section, 1200 West Washington Street, Phoenix, AZ
85007. If you require assistance, you may contact the Consumer Services Section at
1-800-222-7000 or 602-542-4251.

About Intervention

The law provides for an open public hearing at which, under appropriate circumstances, interested persons may intervene. An interested person may be granted intervention if the outcome of the case will directly and substantially impact the person, and the person's intervention will not unduly broaden the issues in the case. Intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other parties' witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and providing public comment on the Application or from filing written comments in the record of the case.

To request intervention, you must file an **original and 13 hard copies** of a written request to intervene with Docket Control, 1200 West Washington, Phoenix, AZ 85007, **no later than March 25, 2016**. You also **must** serve a copy of the request to intervene on each party of record, on the same day that you file the request to intervene with the Commission. Information about intervention and sample intervention requests are available on the Commission's website (www.azcc.gov) using the "Intervention in Utility Cases" link.

Your request to intervene must contain the following:

1. Your name, address, and telephone number, and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. A reference to **Docket No. W-01737A-15-0380**;
3. A short statement explaining:
 - a. Your interest in the proceeding (e.g., a customer of the utility, etc.),
 - b. How you will be directly and substantially affected by the outcome of the case, and
 - c. Why your intervention will not unduly broaden the issues in the case;
4. A statement certifying that you have served a copy of the request to intervene on the utility or its attorney and all other parties of record in the case; and
5. If you are not represented by an attorney who is an active member of the Arizona State Bar, and you are not representing yourself as an individual, sufficient information and any appropriate documentation to demonstrate compliance with Arizona Supreme Court Rules 31, 38, 39, and 42, as applicable.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before **March 25, 2016**. If representation by counsel is required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor.

ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator, Shaylin Bernal, E-mail SAbernal@azcc.gov, voice phone number 602-542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that **New River shall file certification of mailing and publication** as soon as practicable after the mailing and publication has been completed, but **no later than March 23, 2016**.

1 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication
2 of same, notwithstanding the failure of an individual to read or receive the notice.

3 IT IS FURTHER ORDERED that Staff shall file its **Staff Report** and associated exhibits to
4 be presented at the hearing on or before **March 2, 2016**.

5 IT IS FURTHER ORDERED that any **objection or response to the Staff Report** from New
6 River or any intervenor shall be made in writing and filed on or before **March 16, 2016**.

7 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to
8 this matter may opt to receive service of all filings in this docket, including all filings by parties and
9 all Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the
10 Commission's Hearing Division, via email sent to an email address provided by the party rather than
11 via U.S. Mail. To exercise this option, a party shall:

- 12 1. Ensure that the party has a valid and active email address to which the party has
13 regular and reliable access ("designated email address");
- 14 2. Complete a Consent to Email Service using the form available on the Commission's
15 website (www.azcc.gov) or a substantially similar format;
- 16 3. File the original and 13 copies of the Consent to Email Service with the Commission's
17 Docket Control, also providing service to each party to the service list;
- 18 4. Send an email, containing the party's name and the docket number for this matter, to
19 HearingDivisionServicebyEmail@azcc.gov from the designated email address, to
20 allow the Hearing Division to verify the validity of the designated email address;
- 21 5. Understand and agree that service of a document on the party shall be complete upon
22 the sending of an email containing the document to the designated email address,
23 regardless of whether the party receives or reads the email containing the document;
24 and
- 25 6. Understand and agree that the party will no longer receive service of filings in this
26 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless
27 and until the party withdraws this consent through a filing made in this docket.
28

1 IT IS FURTHER ORDERED that a party's consent to email service shall not become
2 effective until a Procedural Order is issued approving the use of email service for the party. The
3 Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and the
4 Hearing Division has verified receipt of an email from the party's designated email address.

5 IT IS FURTHER ORDERED that a party's election to receive service of all filings in this
6 matter via email does not change the requirement that all filings with the Commission's Docket
7 Control must be made in hard copy and must include an original and 13 copies.

8 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
9 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac*
10 *vice*.

11 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
12 Communications) applies to this proceeding and shall remain in effect until the Commission's
13 Decision in this matter is final and non-appealable.

14 IT IS FURTHER ORDERED that any motion filed in this matter, other than a motion to
15 intervene, that is not ruled upon by the Commission within 20 calendar days of the filing date of the
16 motion shall be deemed denied.

17 IT IS FURTHER ORDERED that any response to a motion, other than a motion to intervene,
18 shall be filed within five calendar days of the filing date of the motion.

19 IT IS FURTHER ORDERED that any reply related to a motion shall be filed within five
20 calendar days of the filing date of the response to the motion.

21 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
22 pursuant to Civil Procedure Rule 6(a) or (e).

23 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
24 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
25 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at
26 all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for
27 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
28 Law Judge or Commission.

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 DATED this 2nd day of February, 2016.

6 
7 SARAH N. HARPRING
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 2nd day of February, 2016, to:

11 William Mattingly
12 New River Utility Company
13 c/o City of Peoria
14 Office of the City Attorney
15 P.O. Box 4038
16 Peoria, AZ 85380-4038

17 Stephen M. Kemp
18 City Attorney for the City of Peoria
19 8401 West Monroe Street
20 Peoria, AZ 85345
21 Attorney for New River Utility Company

22 Janice Alward, Chief Counsel
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24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
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24 By: 
25 Tammy Velarde
26 Assistant to Sarah N. Harpring